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(2)

No.

IN THE

Supreme Court of the United States

RICARDO GLOVER,

Petitioner,

v.

GARY McCAUGHTRY, WARDEN,

Respondent.

Separate Appendix
To Petition For Writ Of Certiorari

RICARDO GLOVER
Layman *(Pro Se)* Litigant
Prisoner's ID #207606
Oshkosh Correctional Institution
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Oshkosh, Wisconsin 54903-3310

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
August 23, 2010

Before

KENNETH F. RIPPLE, *Circuit Judge*

No. 95-2304

RICARDO GLOVER,
Petitioner-Appellant,

Appeal from the United States District Court for the Eastern District of Wisconsin.

v.

No. 95 C 425

GARY McCAUGHTRY,
Respondent-Appellate.

J.P. Stadtmueller, *Judge*

ORDER

Ricardo Glover's MOTION TO RECALL THE MANDATE is DENIED. The motion constitutes a second or successive collateral attack that may be commenced only if the criteria of 28 U.S.C. § 2244(b) have been satisfied, *Calderon v. Thompson*, 523 U.S. 538, 553-54 (1998), which is not here argued. Indeed, by iterating the claim previously presented, authorization would be barred by § 2244(b)(1).

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 95-2304

RICARDO GLOVER,

Petitioner,

v.

GARY R. McCAUGHTRY, WARDEN,
WAUPUN CORRECTIONAL INSTITUTION,

Respondent.

PETITION FOR THE COURT TO RESCIND ITS' ORIGINAL ORDER AND RECALL THE MANDATE THEREOF DENYING HABEAS § 2254 APPEAL BASE ON EXTRAORDINARY CIRCUMSTANCES AND IN THE INTEREST OF JUSTICE

Petitioner Ricardo Glover, a layman, (*pro se*) litigant, petitions the United States Court of Appeals for the Seventh Circuit, the original panel of the denial of his habeas § 2254 appeal, the Honorable

Kenneth F. Ripple, Ilana Diamond Rovner, and Terence T. Evans, Circuit Judges to rescind their original order and recall the mandate thereof denying his habeas § 2254 appeal. *See Ricardo Glover v. Gary R. McCaughtry, Warden*, No. 95-2304 (7th Cir. 1997, unpublished opinion).

This petition is based on extraordinary circumstances exists and in the interest of justice. Mr. Glover acknowledges that this Court has warned him if he returns to it with his personal jurisdiction and subject-matter jurisdictional claims that he will invite sanction, however, on-point cases are respectfully submitted herein show that extraordinary circumstances exists, in the interest of justice and a miscarriage of justice has occurred for the Court to take a look at them, and thereafter if the Court believes Mr. Glover should be sanctioned, then so be it, or if not the Court may grant him extraordinary relief.

Mr. Glover respectfully asks this Court for its attention, because he is actually innocent and his liberty was unconstitutionally and unlawfully taken from him. The hardest thing for a layman (*pro se*) litigant as Mr. Glover to do is to get a court to listen to him and respect his pleadings. Mr. Glover is a layman (*pro* se) litigant and unaided by counsel, he asks this Court that the present petition be liberal construction according to *Erickson v. Pardus*, 551 U.S. 89 (2007):

> "[B]een proceeding, from the litigation's outset, without counsel. A

> document filed *pro se* is 'to be liberally construed,' *Estelle*, 429 U.S., at 106, 97 S.Ct. 285, 50 L.Ed.2d 251, and 'a *pro se* complaint, however inactfully pleaded, must be held to less stringent standard than formal pleadings drafted by lawyers,' ibid. (internal quotation marks omitted). Cf. Federal Rules Civil Procedure 8(f) ('All pleadings shall be so construed as to do substantial justice')."

See 551 U.S. at 94. Mr. Glover drafted this petition after his family received hundreds of cases similar and on-point to his situation from organizations and law professors in different States. Mr. Glover respectfully submits and presents his extraordinary situation.

1. CONSTITUTIONAL AND STATUTORY JURISDICTION

A. *The Supreme Court's Jurisdiction*

"Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress." *See* ***Kline v. Burke Constr. Co.***, 260 U.S. 226, 234 (1922). "Congress, having the power to establish the courts, must define their respective jurisdiction.... Courts created by statute can have no jurisdiction but such as the statute confers." *See* ***Sheldon v. Sill***, 49 U.S. (8 How.) 441, 448-449, 12 L.Ed. 1147 (1850).

"[A]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have give to the court the capacity to take it, *and an act of Congress [legislative] must have supplied it....* To the extent that such action is not taken, the power lies dormant." *See* ***Mayor v. Cooper***, 6 Wall. 247, 252, 18 L.Ed. 851 (1868) (emphasis added).

B. *The Seventh Circuit's Jurisdiction*

The Seventh Circuit's "jurisdiction is limited and is established by Article III of the Constitution and by statutes enacted by Congress pursuant to the Constitution." *See* ***United States v. Janik***, 10 F.3d 470, 471 (7th Cir. 1993). "Created by these written laws, federal courts, including [the Seventh Circuit], 'disclaim all jurisdiction not given by the constitution or by the law of the United States.'" *Id.* (*quoting* ***Ex Parte Bollman***, 8 U.S. (4 Cranch) 75, 93, 2 L.Ed. 554 (1807)).

C. *The Wisconsin Criminal Courts' Jurisdiction*

In Wisconsin, the ***commencement of criminal proceedings*** are found under Chapter 968, the timely filing of a criminal complaint by the prosecutor, *see* Wis. § 968.01(2) against a defendant at his or her initial appearance hearing from a warrantless arrest and detention of their person in according to the time limitation period provided by Wis. § § 968.04(1)(a) and 970.01(2), to invoke the criminal circuit court's subject-matter jurisdictional power to act and

proceed thereinafter [to adjudicate] pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03, and in conjunction with Wis. § 970.02(1)(a), to provide the defendant with constitution notice of the charged filed against him or her and to provided them with a copy of the complaint. In addition, for the criminal circuit court to set bail on the defendant for the "charged" offense. *See* Wis. § § § 969.02(1) and 969.03(1) and 970.02(2). *See* (Exhibits A-E). If the criminal complaint is not filed on the criminal circuit court at the defendant's initial appearance from a warrantless arrest and detention against him or her, then no offense exists, and therefore the criminal circuit court does not have subject-matter jurisdiction over a nonexistent offense. *See State v. Christensen*, 110 Wis.2d 538, 542, 329 N.W.2d 382, 383 (1983).

Wisconsin criminal circuit courts are created by written law, and their subject-matter jurisdiction is defined by written law, *see* Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03. The criminal circuit courts,

> "cannot transcend that jurisdiction. It is unnecessary to state the reasoning on which the opinion is found, because it has been repeatedly given by this Court; and with decisions hereto rendered on this point, no member of the bench has, even for an instant, been dissatisfied." *See Ex parte Bollman*, 4 Cranch 75, 93, 2 L.Ed. 554 (1807). Two-hundred years later, in 2007, the Supreme Court in *Bowles v. Russell*, 551 U.S. 205, 214

(2007), enforced its *Bollman* decision when it held that courts have "no authority to create equitable exceptions to jurisdictional requirements," along with its decision in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 n.3 (1988) ("a litigant's failure to clear a jurisdiction hurdle can never be 'harmless' or waived by a court."), and enforcing the same in *Bowles,* 551 U.S. at 213 (when a litigant's "error is one of jurisdictional magnitude, [they] cannot rely on forfeiture or waiver to excuse [their] lack of compliance with the statute's time limitation.").

The Wisconsin Court of Appeals' jurisdiction is invoked by,

> Similar, to the commencement of a criminal proceeding in the criminal circuit court, it is timely filing of the notice of appeal, which invokes the Wisconsin Court of Appeals' subject-matter jurisdiction. *See State v. Williams*, 230 Wis.2d 50, 601 N.W.2d 838 (Wis.App. 1999) (appeal dismissed for untimely filing of the notice of appeal). An appeal is commenced and jurisdiction is invoked by the filing of the notice of appeal with the clerk of the criminal circuit court, appeal of criminal circuit court's order or judgment is perfected by filing timely notice of appeal. *Id.*

In addition, the Wisconsin Supreme Court's jurisdiction is invoked by,

> A decision of the Wisconsin Court of Appeals is reviewable only by a petition to appeal which is granted by the Wisconsin Supreme Court and that the petition *shall* be filed within 30 days of the date of the decision of the Wisconsin Court of Appeals constitutes a limitation upon the jurisdiction of the Wisconsin Supreme Court to entertain a petition to appeal. *See* Wis. § 808.10; *see also First Wisconsin Nat. Bank v. Nicholaou*, 87 Wis.2d 360, 274 N.W.2d 704 (Wis. 1979) (the petition to appeal the decision of the court of appeals filed outside the mandatory language of sec. 808.10 constitutes a limitation upon the jurisdiction of the court to entertain a petition to appeal, the court has no subject-matter jurisdiction over the untimely appeal, nor can it extend the jurisdictional requirements).

2. THE PROTECTIONS OF THE FOURTEENTH AMENDMENT AND IT'S CODIFICATIONS

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution, which provide in relevant part:

> Section 1... No State shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sections 1 of the Fourteenth Amendment are the prohibitions addressed to the States. A State acts by its legislative, its executive, or its judicial authorities, by whatever instruments or in whatever modes that action may be taken. A State can act in no other way.

The Fourteenth Amendment is enforced by its codifications, Wisconsin Statutes Sections, which provides:

> Article VII, Section 8 of the Wisconsin Constitution – *Circuit court: jurisdiction,* which provides: "Except as otherwise provided by law, the circuit court ***shall*** have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit as the legislature may prescribe by law. The circuit court may issue all writs necessary in aid of its jurisdiction." (Emphasis added). *See* (Exhibit·A at 48a, attached to this petition).
>
> Wisconsin Chapter 753.03, Circuit Court, Wis. § 753.03 – *Jurisdiction of circuit courts*, which provides in relevant

part: "the circuit courts have power to hear and determine, within their respective circuits, all civil and criminal actions...." *See* (Exhibit-B at 48a, attached to this petition).

Wisconsin Chapter 968, Commencement Of Criminal Proceedings, Wis. § 968.01(2) – *Complaint*, which provides: "The complaint is a written statement of the essential facts constituting the offense charged." *See* (Exhibit-C at 49a, attached to this petition).

Wisconsin Chapter 968, Commencement Of Criminal Proceedings, Wis. § 968.04(1)(a) – *Warrant or summons on complaint*, which provides in relevant part: "When an accused has been arrested without a warrant and is in custody ... no warrant ***shall*** be issued and the complaint ***shall*** be filed forthwith with a judge." (Emphasis added). *See* (Exhibit-C at 49a, attached to this petition).

Wisconsin Chapter 969, Bail And Other Conditions Of Release, Wis. § 969.02(1) – Release of defendants charged with misdemeanors, which provides: "A judge may release a defendant charged with a misdemeanor without bail or may permit him to

execute an unsecured appearance bond in an amount specified by the judge." *See* (Exhibit-D at 50a, attached to this petition).

Wisconsin Chapter 969, Bail And Other Conditions Of Release, Wis. § 969.03(1) – Release of defendants charged with felonies, which provides: "A judge may release a defendant charged with a felony without bail or may permit him to execute an unsecured appearance bond or the judge may in addition to requiring the execution of an appearance bond or in lieu thereof impose one or more ... condition." *See* (Exhibit-D at 50a, attached to this petition).

Wisconsin Chapter 970 Criminal Procedure – Preliminary Proceedings, Wis. § 970.01(2) – ***Initial appearance before a judge***, which provides: "When a person is arrested without a warrant and brought before a judge, a complaint ***shall*** be filed forthwith." (Emphasis added). *See* (Exhibit-E at 51a, attached to this petition).

Wisconsin Chapter 970 Criminal Procedure – Preliminary Proceedings, Wis. § 970.02(1)(a) – ***Duty of a judge at the initial appearance***, which provides: "At the initial appearance the judge ***shall*** inform the defendant:

> Of the charge against him and ***shall*** furnish the defendant with a copy of the complaint which ***shall*** contain the possible penalties for the offenses set forth therein. In the case of a felony, the judge ***shall*** also inform the defendant of the penalties for the felony with which the defendant is charged." (Emphasis added). *See* (Exhibit-E at 51a, attached to this petition).
>
> Wisconsin Chapter 970 Criminal Procedure – Preliminary Proceedings Wis. § 970.02(2) – *Duty of a judge at the initial appearance,* which provides: "The judge ***shall*** admit the defendant to bail in accordance which ch. 969." (Emphasis added). *See* (Exhibit-E at 51a, attached to this petition).

The foregoing codifications of the Fourteenth Amendment protect individuals against deprivation of their liberty without due process of law and the equal protect of the law at the hands of the State. According to Wis. § § 968.04(1)(a) and 970.01(2), the prosecutor ***shall*** file the complaint, *see* Wis. § 968.01(2) against the defendant prior to his or her initial appearance, or at the time of his or her initial appearance from a warrantless arrest and detention to invoke the criminal circuit court's subject-matter jurisdictional power pursuant to Wis. § 753.03 to hear a criminal action. In addition, the criminal circuit court' ***shall*** inform the defendant of the charge against him or her and ***shall*** provide the defendant with a copy of the complaint, which contains the

charge and penalties against him or her. *See* Wis. § 970.02(1)(a).

The Fourteenth Amendment, which ordains that "all person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. THE REASONS WHY THE COURT SHOULD RESCIND ITS' ORIGINAL DENIAL AND RECALL ITS MANDATE ON MR. GLOVER'S HABEAS § 2254 APPEAL, INSTEAD OF SANCTIONING HIM.

A. The Accusatory Instrument Is A Jurisdictional Document.

There are three *accusatory instruments* used to charge a defendant in a court of law, they are an *indictment* of a grand jury, an *information* and *complaint* of the public prosecutor. An *accusatory instrument* is "[a] document in which an accusation of crime is set forth like an indictment, information or complaint." *See* Black's Law Dictionary at 15 (1891-1991).

This Court has held that an indictment meets the requirement of Rule 7(c)(1) if it (1) contains the elements of the offense charged; (2) fairly informs the

defendant of the nature of the charge against him; and (3) enables the defendant to plead the judgment as a bar to later prosecution for the same offense. *See* ***United States v. Moore***, 446 F.3d 671, 676-77 (7th Cir. 2006); *see also* Fed. R. Crim. P. 7(c) (1) ("The indictment or information must be a plain, concise and definite written statement of the essential facts constituting the offense charged....").

The State of South Dakota uses an indictment of a grand jury, or information of the public prosecutor to charge a defendant with a crime. *See* ***Ronald Lee Honomichl v. State of South Dakota***, No. 13918, 333 N.W.2d 797, 798, 1983 S.D. LEXIS 334, **3-4 (S.D. 1983) (*quoting* Article VI, § 10 of the South Dakota Constitution). The South Dakota Supreme Court stated "[w]ithout a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime." *See* ***Honomichl***, 333 N.W.2d at 798, 1983 S.D. LEXIS at **4 (*citing* ***Albrecht v. United States***, 273 U.S. 1, 47 S.Ct. 250 (1927)).

Wisconsin uses as its accusatory instrument a *complaint* and not the information to charge a defendant with a crime, *see* ***State of Wisconsin v. Christopher L. Russell***, 251 Wis.2d 482, 640 N.W.2d 565, 2002 Wisc. App. LEXIS 54 (Wis.App. 2002, unpublished opinion) (the criminal complaint at the defendant's initial appearance hearing not the information charged him with a crime, the absence of the information was a mere defect and did not deprived the criminal court of subject-matter jurisdiction). *See* (Exhibit-K at 75a-83a, attached

hereto); *see also State v. Smaxwell*, 235 Wis.2d 230, 612 N.W.2d 756 (Wis.App. 2000).

The accusatory instrument, the criminal complaint is the mandatory and jurisdictional instrument for charging a defendant with an offense committed against the laws of Wisconsin, Wis. § 968.01(2) - **Complaint** provides: "The complaint is a written statement of the essential facts constituting the offense charged." Wisconsin criminal circuit courts' subject-matter jurisdiction is derived from written law; and defined by written law, Article VII, Section of the Wisconsin Constitution and Wis. § 753.03, and is not waivable, and may be raised despite guilty plea. *See State v. Aniton*, 183 Wis.2d 125, 129, 515 N.W.2d 302, 303 (1994). Wisconsin criminal "circuit court's subject-matter jurisdiction attaches when the complaint is filed ... the circuit court lacks criminal subject-matter jurisdiction only where the complaint does not charge an offense known to law." *See Aniton*, 183 Wis.2d at 129, 515 N.W.2d at 303. "Thus, whether the circuit court has jurisdiction over a particular criminal complaint presents a question of statutory and constitutional interpretation." *See State v. LeQue*, 150 Wis.2d 256, 262, 442 N.W.2d 494, 497 (Wis.App. 1989). This Court in a brief discussion on criminal complaints in Wisconsin stated in *United States v. Shannon*, 94 F.3d 1065, 1087-89 (7th Cir. 1996), acknowledging that the "complaint is a written statement of the essential facts constituting the offense charged ... Because the complaint in Wisconsin and other jurisdiction is the initial charging instrument in a felony proceeding."

B. The Enactment, What Should Have Happened And What Did not Happened In This Case.

Here, in this present case, at the outset [initial appearance], *see* (Exh-H at 57a-65a), where the State (prosecutor) forcefully brought Ricardo Glover before a criminal circuit court in chains and shackles from a warrantless arrest and detention by police to answer no criminal offense. Therein the said proceeding, the prosecutor informs the criminal circuit court that she did not file her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. 968.01(2)) against Mr. Glover charging him with a crime against the laws of Wisconsin, but requested that the criminal circuit court set bail on Mr. Glover contrary to the Fourteenth Amendment and its codifications to hold him. *Id.*

The criminal circuit court was duty bound by the fundamental and threshold principles of subject-matter jurisdictional law, personal jurisdictional law, constitutional law, and statutory law to dismiss the unconstitutional and unlawful proceeding and order Mr. Glover's immediate release. Forth coming is an enactment of what should had occurred, the criminal circuit court should had informed the prosecutor and did the forth coming, because it lacked jurisdiction at the outset:

The criminal circuit court at the outset should had stated and concluded the followings: We are at the initial appearance proceeding, which is a jurisdictional, constitutional and statutory proceeding, where the court has to perform now, not

later four (mandatory) duties, non-discretionary functions, which are:

> 1) to determine does the court have subject-matter jurisdictional power to adjudicate a criminal case (charge or charges) filed against Mr. Glover therein the State's (prosecutor's) written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)); 2) to determine does the court have personal jurisdictional over the person of Mr. Glover from the State's (prosecutor's) written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)); 3) for the court to make a constitutional judicial determination does probable cause exist therein the State's (prosecutor's) written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) for Mr. Glover warrantless arrest and detention; and, 4) for the court to set bail on Mr. Glover from the charge or charges filed against him therein the State's (prosecutor's) written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)).

However, none can ever be perform now by the court, because the court's jurisdictional power has not been invoked by the State (prosecutor) to act and proceed hereinafter [to adjudicate], no criminal action exists before the court against Mr. Glover, none

whatsoever. This proceeding (case) must be dismissed with prejudice.

Here, at the outset of the criminal proceeding, it was the State (prosecutor's) duty to file charges against an individual who she believed committed a crime. However, no crime has been committed in this case that the court is aware of, because the State (prosecutor) did not filed her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) on the court against Mr. Glover charging him with a crime. In Wisconsin, Chapter 968 – "COMMENCEMENT OF CRIMINAL PROCEEDINGS," mandates that a criminal complaint be filed to commencement criminal proceedings against the accused in the circuit courts. Wis. § 968.01(2) *complaint* provides: "The complaint is a written statement of the essential facts constituting the offense charged." No written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) has been filed on the court by the State (prosecutor) against Mr. Glover charging him with a crime:

> 1) to invoke the court's subject-matter jurisdictional power to adjudicate a criminal proceeding pursuant Article VII, Section 8 of the Wisconsin and Wis. § 753.03 against Mr. Glover;[1] 2) to invoke the court's personal jurisdictional

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[1] A circuit court does not have subject-matter jurisdiction over a nonexistent offense. *See State v. Christensen*, 110 Wis.2d 538, 542, 329 N.W.2d 382, 383 (1983).

power over the person of Mr. Glover; [2] 3) for the court to make a judicial determination of probable cause exist therein the complaint for Mr. Glover's warrantless arrest and detention; [3] and 4) for the court to set bail on Mr. Glover for a charged offense. [4]

A court's subject matter jurisdiction is invoked by the filing of a complaint. The filing of a valid

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[2] There is no relationship between Mr. Glover and a criminal complaint for the court to acquire personal jurisdiction over his person. *See* ***State v. Smith***, 131 Wis.2d 220, 239, 388 N.W.2d 601, 609 (Wis. 1986).

[3] No charge existed for the court to find probable cause for Mr. Glover's warrantless arrest and detention as it did not, because the prosecutor did not file the written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) against Mr. Glover charging him with a crime. The "complaint at this point need not contain all the allegations of fact which if would be necessary to convict. The text to be applied at this stage is the same as that which is required for issuance of a warrant:' *** enough information [shall] be presented to the commissioner to enable him to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process.' Jaben v. United States, (1965), 381 U.S. 214, 224, 85 S.Ct. 1365, 1371...." *See* ***State ex rel. Cullen v. Ceci***, 45 Wis.2d 432, 442, 173 N.W.2d 175, 179 (Wis. 1970). "The face of the complaint and any affidavits annexed thereto must recite probable cause for the defendant's detention." *Id.*

[4] The court cannot not set bail on Mr. Glover for a nonexistent offense, only a charged offense therein the prosecutor's complaint. *See* Wis. § § § 969.02(1), 969.03(1) and 970.02(2).

complaint is therefore a mandatory prerequisite to a court's acquiring jurisdiction, subject-matter and personal. The defense of subject-matter jurisdiction can never be waived. Even, the absence of the criminal complaint filed here cannot be waived, even by a plea of no contest or even guilty. Where as here, at the outset [initial appearance], the complaint is not filed; the conviction would be void ab initio for want of subject matter jurisdiction later if the court attempts to adjudicate now.

The first and fundamental question here, at the outset [initial appearance] is that of jurisdiction, "[t]he requirement that jurisdiction be established as a threshold matter ... is 'inflexible and without exception.'" *See Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510, 511 (1884). A party may not waive a defect in subject-matter jurisdiction. *See United States v. Griffin*, 303 U.S. 226, 229 (1938). It is well-settled that a court may raise the question of subject-matter jurisdiction at any time either on the motion of a party litigant or *sua sponte*. *Id.*

Where as here, at the outset of this proceeding [initial appearance], the State (prosecutor) has forcefully brought Mr. Glover before this court in chains and shackles from a warrantless arrest and detention, the law mandates Mr. Glover be afforded due process of law, equal protection of the law, fundamental fairness and non-deprivation of his liberty pursuant to the Fourteenth Amendment to the United States Constitution, which is afforded to all citizens of the United States. Where as here, at the outset, Mr. Glover has been arrested without a

warrant and has remained in custody, the codifications of the Fourteenth Amendment, mandate:

> 1) Wis. § 968.04(1)(a) – *Warrant or summons on complaint*, which provides in relevant part: "When an accused has been arrested without a warrant and is in custody ... no warrant *shall* be issued and the complaint *shall* be filed forthwith with a judge;" and 2) Wis. § 970.01(2) – *Initial appearance before a judge*, which provides: "When a person is arrested without a warrant and brought before a judge, a complaint *shall* be filed forthwith." Wis. § 968.01(2) *complaint* provides: "The complaint is a written statement of the essential facts constituting the offense charged."

It was the duty of the State (prosecutor) to file her timely complaint against Mr. Glover if he had committed a crime, since the State (prosecutor) has not filed her timely jurisdictional accusatory instrument (complaint) no crime exist before the court and the court has no subject-matter jurisdictional power. In addition, criminal subject-matter jurisdiction cannot be conferred upon the court by consent. *Kelly v. State*, 54 Wis.2d 475, 479, 195 N.W.2d 457, 459 (Wis. 1972). Nor can subject-matter jurisdiction be waived. *Id.*

Here, at the outset of the proceeding, the court cannot provide Mr. Glover with a copy of the written

mandatory and jurisdictional accusatory instrument ("complaint," Wis. 968.01(2)) and inform him of the charge against him and penalties for that charge as mandated by law, *see* Wis. § 970.02(1)(a), because the prosecutor did not filed her written mandatory and jurisdictional accusatory instrument ("complaint,' Wis. § 968.01(2)) on the court charging him with a crime to invoke the court's jurisdictional power. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *See Ex parte McCardle*, 7 U.S. 506, 514, 19 L.Ed. 264 (1868).

Without filing the written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) on the court by the prosecution now, at the outset [initial appearance] of this case against Mr. Glover from his warrantless arrest and detention in according to the time limitation period provided by Wis. § § 968.04(1)(a) and 970.01(2), in conjunction with Wis. § 970.02(1)(a), charging that he committed an offense against the laws of Wisconsin, no criminal action exists. Wis. § 753.03 –*Jurisdiction of circuit courts*, provides in relevant part: "the circuit courts have power to hear and determine, within their respective circuits, all civil and criminal actions," no action exist before this court. The circuit courts are created by written law, and their subject-matter jurisdiction is defined by written law, *see* Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03. This court "cannot transcend that jurisdiction. It is unnecessary to state the reasoning on which the opinion is found, because it has been

repeatedly given by this Court; and with decisions hereto rendered on this point, no member of the bench has, even for an instant, been dissatisfied." *See* ***Ex parte Bollman***, 4 Cranch 75, 93, 2 L.Ed. 554 (1807).

Where as here, the prosecutor's failure to file her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) at the outset [initial appearance] in accordance with the prescribed time limitation period of Wis. § § § 968.04(1)(a), 970.01(2) and 970.02(1)(a) at the outset of this proceeding [initial appearance], has deprived the court of **subject-matter jurisdiction** pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03 as well as **personal jurisdiction**, in addition because the State's (prosecutor's) error is one of jurisdictional magnitude, the prosecutor has failed "to clear a jurisdictional hurdle" which "can never be 'harmless' or waived by [the] court." *See* *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 n.3 (1988).

Having said the following, the court lacks subject-matter jurisdictional power to adjudicate upon a none existent criminal action, and therefore the unconstitutional and unlawful proceeding is dismissed with prejudice for lack of subject-matter jurisdiction and personal jurisdiction, and Mr. Glover is discharged immediately from the same, the unconstitutional and unlawful confinement and imprisonment of his person.

As submitted above, the criminal circuit court was duty bound to dismiss the unconstitutional and

unlawful proceeding and discharge Mr. Glover from the same, but failed to do so. This is the end of the enactment.

C. The On-Point Cases To Mr. Glover's Case, Creating Extraordinary Circumstances And In The Interest Of Justice For The Court To Rescind Its' Original Order And Recall The Mandate Thereof

Wisconsin and Ohio have the same identical commencement of criminal proceedings, the filing of the complaint. In Wisconsin's Chapter 968 – "COMMENCEMENT OF CRIMINAL PROCEEDINGS," mandates that a criminal complaint,[5] not the information to be filed to commence criminal proceedings against an accused in a criminal courts. *See* Wis. § 968.01(2) *complaint* provides, "The complaint is a written statement of the essential facts constituting the offense charged."

The Ohio criminal courts have the same identical commencement of criminal proceedings

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[5] In addition, other States as Wisconsin and Ohio use a criminal complaint as its initial charging instruments as well in a criminal case. *See* ***Commonwealth v. Hatchin***, 709 A.2d 405, 1998 Pa. Super LEXIS 117 (Pennsylvania 1998) (the criminal complaint, not the information charged the defendant with a crime, thus, the trial court had subject-matter jurisdiction over the matter); ***Commonwealth v. Khorey***, 521 Pa. 1, n.10, 555 A.2d 100, 106 n.10 (Pennsylvania 1989) (Although a guilty plea results in the waiver of most defenses, an objection to subject-matter jurisdiction can never be waived); ***State v. Jelliff***, 251 N.W.2d 1, 1977 N.D. LEXIS 235 (North Dakota 19977) (a criminal complaint, supported by an affidavit of probable cause charged the defendant with an offense).

against the accused as Wisconsin, mandating that a criminal complaint be filed. *See* Ohio Criminal Rule 3 ("The complaint is a written statement of the essential facts constituting the offense charged."). "[A] defect that deprives a court of subject matter jurisdiction cannot be waived by an accused. The absence of the criminal complaint cannot be waived by a plea of no contest or even guilty, since any conviction resulting from an invalid complaint is a nullity." *See e.g., Ohio v. Bishop,* 1993 Ohio App. LEXIS 5799, *2 (Ohio App. 1993, unpublished; Exhibit-L at 84a-88a, attached to this petition) (*citing, State v. Green*, 48 Ohio App.3d 121, 548 N.E.2d 334 (Ohio 1988); *State v. Miller*, 47 Ohio App.3d 113, 114, 547 N.E.2d 399, 401 (Ohio 1988) (In the absence of a sufficient formal accusation, a court acquires no jurisdiction whatsoever, and if it assumes jurisdiction, a trial and conviction are a nullity ... the complaint is the jurisdictional instrument of the municipal court.").

The State of Ohio, uses a criminal complaint as its initial charging instrument as Wisconsin. *See e.g., State v. Sharp*, 2009 Ohio 1854, 2009 Ohio App. LEXIS 1561 (Ohio App. 2009), where the Ohio Court of Appeals stated:

> "In the absence of a sufficient formal accusation, a Court acquires no jurisdiction whatsoever, and if it assumes jurisdiction, a trial and conviction are a nullity ... The complaint is the jurisdictional instrument of the municipal court."

See Sharp, 2009 Ohio 1854, ¶14, 2009 Ohio App. LEXIS 1561, **5. "A court's subject matter jurisdiction is invoked by the filing of a complaint." *See Id.* "The filing of a valid complaint is therefore a necessary prerequisite to a court's acquiring jurisdiction." 2009 Ohio 1854, ¶14, 2009 Ohio App. LEXIS 1561, **5-6. "We review the determination of subject matter jurisdiction *de novo*, without any deference to the trial court." *See Sharp*, 2009 Ohio 1854, ¶14, 2009 Ohio App. LEXIS 1561, **6. The *Sharp court* further stated that,

> "[T]he defense of subject-matter jurisdiction can never be waived ... The absence of the criminal complaint cannot be waived by a plea of no contest or even guilty, since any conviction resulting from an invalid complaint is a nullity. *State v. Bishop*, (1993), Clark App. No. 3070, 1993 Ohio App. LEXIS 5799, unreported. The question of subject matter jurisdiction is so basic that it can be raised at any stage before the trial court or any appellate court, or even collaterally in subsequent and separate proceedings.
>
> * * * * * *
>
> [I]f the complaint were not properly filed, the convictions are void ab initio for want of subject matter jurisdiction, as the jurisdiction of the Mount Vernon Municipal Court was never invoked.

> Further, appellant is not barred from raising the issue at this stage in the proceedings, as subject matter jurisdiction cannot be waived."

See Sharp, 2009 Ohio 1854, ¶15 & ¶17, 2009 Ohio App. LEXIS 1561, **6, **7; *City of Zanesvill v. Rouse*, 2009 Ohio 2689, 2009 App. LEXIS 2278 (Ohio 2009). In Ohio, as in Wisconsin, under Ohio Criminal Rule 3, provides, "The complaint is a written statement of the essential facts constituting the offense charged." A defect that deprives a court of subject-matter jurisdiction cannot be waived by an accused. The absence of the criminal complaint cannot be waived by a plea of no contest or even guilty, since any conviction resulting from an invalid complaint is a nullity. *See e.g., State v. Green*, 48 Ohio App.3d 121, 548 N.E.2d 334 (Ohio 1988).

"A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged with the commission of the particular offense and charged in the particular form and mode required by law. If that is wanting, his trial and conviction is a nullity, for no person can be deprived of either life, liberty, or property without due process of law." *See e.g., People v. Walley*, 21 Misc.2d 623, 626, 202 N.Y.S.2d 859, 862-863 (New York 1959); *see also Stewart v. State*, 41 Ohio App. 351, 353-354, 181 N.E. 11, 112 (Ohio Ct. App. 1932, unpublished) (same); *Morse v. People*, 43 Col. 118, 122, 95 P. 285, 286-287 (Colorado 1908) (same) (*quoting Dykeman v. Budd*, 3 Wis. 640, 643 (Wis. 1854)).

"The general rule applicable in criminal proceedings ... is that by pleading guilty, the defendant ... waives all nonjurisdictional defects." *See State v. Norris,* 2004 UT App. 267, ¶4, 97 P.3d 732, 735-736 (Utah App. 2004). "Subject matter jurisdiction is the power and authority of the court to determine a controversy and without which it cannot proceed." *Id.* at ¶5, 97 P.3d at 736. "When subject matter jurisdiction is an issue, 'it is the duty of this court to satisfy not only of its own jurisdiction, but also that of the law courts in a cause under review.'" *Id.* (*quoting EEOC v. Chicago Club*, 86 F.3d 1423, 1428 (7th Cir. 1996) (*citing Mitchell v. Maurer*, 293 U.S. 237, 244, 55 .Ct. 162 (1934)).

If a court has no jurisdiction over the subject-matter of the criminal conviction, the defendant's conviction in that court is void. *See Wright v. State*, 2 Tenn. Crim. App. 95, 451 S.W.2d 707, 709 (Tenn. Crim. App. 1969). "If the Court rendering a judgment sought to be attacked collaterally is one of general jurisdiction, there is a presumption that nothing shall be intended to be out of its jurisdiction except that which appears upon the face of the judgment or in the record of the case in which that judgment is rendered." *See Bomar v. State ex rel. Stewart*, 201 Tenn. 480, 483, 300 S.W.2d 885, 887 (Tenn. 1957); *see also State v. Ritchie*, 20 S.W.3d 624, 631, 2000 Tenn. LEXIS 156, **19 (Tenn. 2000) ("the lack of jurisdiction must appear upon the face of the judgment or in the record of the case in which the judgment was rendered.").

Furthermore, if it becomes apparent to a court reviewing the judgment or record of the criminal

circuit court [trial court] that the criminal circuit court [trial court] lacked subject-matter jurisdiction, then the reviewing court shall vacate the judgment and dismiss the case. *See State v. Seagraves*, 837 S.W.2d 615, 616 (Tenn. Crim. App. 1992); *see also Ex parte Nielsen*, 131 U.S. 176, 183 (1889) ("if [the trial court's] want of power appears on the face of the record of his condemnation, whether in the indictment or elsewhere, the court which has authority to issue the writ [of habeas corpus] is bound to release him.").

The court in *Honomichl, supra,* stated: "Subject matter jurisdiction cannot be conferred by agreement, consent, or waiver. *State v. Higgins*. 145 N.W.2d 478 (N.D. 1966); *see also, State v. Cochrun*, 328 N.W.2d 271 (S.D. 1983). A reviewing court is required to consider the issue of subject matter jurisdiction even where it was not raised below in order where to avoid an unwarranted exercise of judicial authority. *State v. Wiese*, 201 N.W.2d 734 (Ia. 1972). As we held in *Mee*, 67 S.D. 335, 292 N.W.2d 875, subject matter jurisdiction cannot be acquired by estoppel." *See Honomichl*, supra, 333 N.W.2d at 799, 1983 S.D. LEXIS at **7.

D. No Provision Of The Constitution Or Statute, Or Both, Gave The Criminal Circuit Court Jurisdictional Power To Adjudicate At The Outset, [Initial Appearance], To Condemn And Enter A Judgment Against Mr. Glover.

The facts of this case are not in dispute; they have been taken directly from the record. On May 29,

1989, S.B. stated to Racine, Wisconsin police that while she and her brother-in-law (Ricardo Glover) were returning from Kenosha, Wisconsin to Racine, Wisconsin looking for her mother, Glover parked his vehicle and touched her crotch and buttock area while they were in his car, *see* (Exh-F at 52a-53a). However, S.B. informed Sgt. Grayhart of the Racine Police Department that no sexual conduct or contact took place on the part of Mr. Glover.

Subsequently, police took S.B. to Racine St. Luke's Hospital Emergency Room, Doctor G.L. Brown attending physician observed and talked with S.B., he reported as follows:

> A female involved in an assault, which she was supposed to be taken over to her grandmother's home [in Kenosha County] by her brother-in-law.
>
> When they could not find her grandmother there, they were returning to patient's sister's home [in Racine County] so she could spend the night. Then the brother-in-law took her to a bridge and, she states, attempted to sexually molest her, getting very close to her, placing his hands on her crotch and on her chest. When he could not get her jumpsuit off easily, apparently aborted his attempt to molest her and decided that he did not want her talking about it, so he took a torn towel and "tied" her hands together behind her back, told her that she wasn't going to be able to

> tell anybody about this and proceeded to stop on a bridge overlying a river with several feet of water in it, threw her off the bridge approximately 15-20 feet to the water below. Patient was able to "untie" her hand and escape.

See (Exh-F at 52a-53a). But, the State prosecutor's very own witnesses, Michael Blalke and Cruz Jamaillo testified under oath contrary to S.B. "untying" her hands from behind her back and escaping, both, Mr. Blake and Mr. Jamaillo stated under oath that when S.B. "appeared" in their home her hands were "tied" behind her back and Mr. Jamaillo was the one who "untied" her hands from behind her back. S.B. stated that she "untied" her hands from behind her back and went to seek help was untrue as both witnesses testified under oath. The only way the incident could have occurred is that S.B. walked into the water with her hands freely ("untied"), and walked out of the water with someone assisting her in "tying" her hands behind her back when she was wet. As the evidence clearly revealed, S.B. was not thrown over a bridge.

Dr. Brown's observation of and discussion with S.B., surrounding the facts of the alleged incident continues, he reported further that S.B. stated:

> She scraped up her leg during the fall, landed primarily on her bottom. Absolutely denies any pain at this point. *Seems to be in relatively good spirits. Is able to describe the incident consistently between those*

interviewers and relative good detail.... Patient absolutely denies that any actual sexual contact took place.

See id.. From S.B.'s statements alone to Dr. Brown and Racine police along, without any investigation *id.*, police made a deliberate plan to arrest Mr. Glover without a warrant. Subsequently, at 6:00 a.m., on May 29, 1989, Racine police made a warrantless arrest of Mr. Glover, placing him in custody and did not release him from their custody, and stated that on the same date they obtained a statement from Mr. Glover and other evidence during the warrantless arrest and detention of Mr. Glover. The statement police allegedly obtained, Mr. Glover never read it, nor signed it, nor knowledge the correctness of it, that statement entered into evidence against Mr. Glover was not his own statement.

S.B. made another statement to police and signed it as well while Mr. Glover was in Racine police custody, informing police that her initial statement was untrue. This signed statement, *see* (Exh-G at 54a-56a), of S.B. contradicts her initial statement to Dr. Brown and Racine police, *see* (Exh-F at 52a-53a) to get Mr. Glover arrested, and shows that Mr. Glover was warrantlessly arrested and jailed falsely, in fact, it shows the untruthfulness of S.B. *See* (Exh-F; Exh-G at 54a-56a). On the same date, May 29, 1989, Officer Cindy Cros of the Kenosha Police Department reported that S.B. informed her that while she was spending the night in Racine at her sister's home, her sister is married to Ricardo Glover, that she was awaken at approximately 1:00 a.m. by Glover on this date and was driven back to Kenosha

to her residence by Glover; nobody was home at S.B.'s residence except her grandmother. S.B. was held with a knife against her throat by Glover and ordered to take her clothes off or she would be killed. She complied and she lay on top of her mother's bed with Glover on top of her naked. S.B. "states that intercourse did not occur but Glover ejaculated on the sheet." *See* (Exh-G at 55a). As the examination of the bedsheets revealed: "[n]o semen was detected on the panties, leggings or bedsheet." *See* (Exh-I at 66a-71a). S.B. was untruthful once again.

On May 30, 1989, the Racine District Attorney's Office (prosecutor) forcefully brought Mr. Glover before a criminal circuit court for an initial appearance in chains and shackles from his warrantless arrest and detention by police pursuant to the Fourteenth Amendment's due process clause and equal protection clause, and the Fourteenth Amendment's codifications, Wis. § § 968.04(1)(a) and 970.01(2) in conjunction with Wis. § 970.02(1)(a), to:

> 1) invoke the criminal circuit court's subject-matter jurisdictional power to adjudicate a criminal case (charge or charges) filed against Mr. Glover therein the prosecutor's written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2));
>
> 2) to invoke the criminal circuit court's personal jurisdictional power over the person of Mr. Glover from her

written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2));

3) for the criminal circuit court to make a constitutional judicial determination does probable cause exist from the her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) for Mr. Glover warrantless arrest and detention; and,

4) for the criminal circuit court to set bail on Mr. Glover from the charge or charges filed against him therein her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)).

Here, at the outset [initial appearance] of this case, contrary to the Fourteenth Amendment's due process of law and equal protection of the law, and it's codification, Wis. § § 968.04(1)(a), and Wis. § 970.01(2) in conjunction with 970.02(1)(a), the prosecutor did not filed her timely written mandatory and jurisdiction accusatory instrument ("complaint," Wis. § 968.01(2))[6] against Mr. Glover charging him

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[6] In addition, the prosecutor, an officer of the court stated to the criminal circuit court without filing her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) against Mr. Glover that he "raped" S.B, *see* (Exh-H at 57a-65a). This was intentional misconduct on the part of the prosecuting attorney because she knew that Dr. Brown's report

with a crime in accordance with the prescribed time limitation period of Wis. § § 968.04(1)(a) (Mr. Glover was arrested without a warrant on May 29, 1989 and is in police custody, no warrant ***shall*** be issued for him and the complaint charging him with an offense ***shall*** be filed now or at his initial appearance on the criminal circuit court by the prosecutor) and 970.01(2) (Mr. Glover was arrested without a warrant and on May 30, 1989 brought before an initial appearance hearing court, the complaint ***shall*** be filed on the initial appearance hearing court against him now) in conjunction with Wis. § 970.02(1)(a) (at this initial appearance hearing the court ***shall*** inform Mr. Glover of the charge against him and ***shall*** furnish him with a copy of the complaint which ***shall*** contain the possible penalties for the offenses set forth therein. In the case he is charged with a felony, the judge ***shall*** also inform him of the penalties for that felony which he is charged) to invoke the criminal circuit court's subject-matter jurisdictional power and personal jurisdiction power to act and proceed at the outset pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03 in this case. *See* (Exh-H at 57a-65a). In addition, the Wisconsin Legislature made no provision therein Wis. § § § 968.04(1)(a), 970.01(2) or 970.02(1)(a), for the criminal circuit court to allow the prosecutor time to extend the filing of her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. 968.01(2)) after Mr. Glover's initial appearance to invoke its subject-matter jurisdiction.

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stated that S.B. was not raped and "*injury free*," *see* (Exh-F at 52a-53a) and Officer Cros' reported stated "*that intercourse did not occur*," *see* (Exh-G at 55a; Exh I at 66a-71a).

Mr. Glover's constitutional rights to due process of law, equal protection of the law, fundamental fairness and non-deprivation of his liberty pursuant to the Fourteenth Amendment and his statutory rights, which are codifications of the Fourteenth Amendment, Wis. § § § 968.04(1)(a), 970.01(2) and 970.02(1)(a), were violated,[7] when the criminal circuit court failed to dismiss the case against him for lack of subject-matter jurisdiction and personal jurisdiction, adjudicating on unlawful "hypothetical jurisdiction," and setting an unconstitutional and unlawful bail on him of Ten Thousand Dollars, ($10,000.00), holding him for the nonexistent offense of "further investigation." *Id.* Here, at the outset [initial appearance], the accusatory instrument (complaint) was not filed on the criminal circuit court in accordance with the prescribed time limitation period, the conviction and judgment thereof is void ab initio for want of subject matter jurisdiction, as the jurisdiction of the criminal circuit court was never invoked, as subject matter jurisdiction cannot be waived. In addition, when the prosecutor failed to file her written mandatory and jurisdictional accusatory instrument (complaint) against Mr. Glover at the outset of the criminal case [initial appearance], *see* (Exh-H at 57a-65a), the prosecutor failed "to clear a jurisdictional hurdle" which "can never be 'harmless'

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[7] This was a continuous violation of Mr. Glover's Fourteenth Amendment rights to due process of law, equal protection of the law, fundamental fairness and deprivation of his liberty that could not be waived, because it "went to the power of the State to bring him into court to answer [no] charge brought against him." *See Blackledge v. Perry*, 417 U.S. 21, 30 (1974) (emphasis added in brackets).

or waived by a court." *See Torres.*, 487 U.S. at 317 n.3.

The criminal circuit court lacked subject-matter jurisdictional power to adjudicate at the outset [initial appearance] pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03, because the written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) was not filed on it by the prosecutor in accordance with the prescribed time limitation period of Wis. § § 968.04(1)(a) (Mr. Glover was arrested without a warrant on May 29, 1989 and is in police custody, no warrant ***shall*** be issued for him and the complaint charging him with an offense ***shall*** be filed now or at his initial appearance on the criminal circuit court by the prosecutor) and 970.01(2) (Mr. Glover was arrested without a warrant and on May 30, 1989 brought before an initial appearance hearing court, the complaint ***shall*** be filed on the initial appearance hearing court against him now) in conjunction with Wis. § 970.02(1)(a) (at this initial appearance hearing the court ***shall*** inform Mr. Glover of the charge against him and ***shall*** furnish him with a copy of the complaint which ***shall*** contain the possible penalties for the offenses set forth therein. In the case he is charged with a felony, the judge ***shall*** also inform him of the penalties for that felony which he is charged), because "[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *See* ***Steel Co. v. Citizens for a Better Environment***, 523 U.S. 83, 94 (1998) (*quoting* ***Ex parte McCardle***, 7 Wall. 506, 54,

19 L.Ed. 264 (1868)). "The requirement that jurisdiction be established as a threshold matter ... is 'inflexible and without exception.'" *See Steel Co.*, 523 U.S. at 94-95 (*quoting Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884)).

The criminal circuit court at the outset of this criminal case [initial appearance] acted and proceeded thereinafter on unconstitutional and unlawful "hypothetical jurisdiction," *see Steel Co.*, 523 U.S. at 84, 94, no written mandatory and jurisdictional accusatory instrument ("complaint", Wis. § 968.01(2)) was filed on it by the prosecutor to invoke it subject-matter jurisdictional power, *see* (Exh-H at 57a-65a). The defect was jurisdictional, not only because no written mandatory and jurisdictional accusatory instrument ("complaint", Wis. § 968.01(2)) was filed against Mr. Glover charging him with an offense for the criminal circuit court to adjudicate, but also the defect was a violation against the scope of power granted to the criminal circuit court to adjudicate, at the outset [initial appearance] of the criminal case, *see* (Exh-H at 57a-65a). *See Steel Co.*, 523 U.S. at 101-102 ("For a court to pronounce upon the meaning or constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires.").

As the Supreme Court held,

> "courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that

> jurisdiction. It is unnecessary to state the reasoning on which the opinion is found, because it has been repeatedly given by this Court; and with decisions hereto rendered on this point, no member of the bench has, even for an instant, been dissatisfied."

See Bollman, 4 Cranch at 93, 2 L.Ed. 554. The lack of subject-matter jurisdiction of the criminal circuit court at the outset of the criminal proceeding [initial appearance], *see* (Exh-H at 57a-65a), involved its power "to hear a case, can never be forfeited or waived." *See United States v. Cotton*, 535 U.S. 625, 630 (2002). The criminal circuit court at the outset of the criminal case was without the written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) filed on it by the prosecutor, did not make the constitutional judicial determination that probable cause existed for Mr. Glover's warrantless arrest and detention. The law mandated that the written mandatory and jurisdictional accusatory instrument:

> "[C]omplaint at this point need not contain all the allegations of fact which if would be necessary to convict. The text to be applied at this stage is the same as that which is required for issuance of a warrant:' *** enough information [shall] be presented to the commissioner to enable him to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the

> criminal process.' Jaben v. United states, (1965), 381 U.S. 214, 224, 85 S.Ct. 1365, 1371 ... The face of the complaint and any affidavits annexed thereto must recite probable cause for the defendant's detention."

See Cullen, supra 45 Wis.2d at 442, 173 N.W.2d at 179. No charge existed for the criminal circuit court to find probable cause for Mr. Glover's warrantless arrest and detention as it did not, nor to set a Ten Thousand Dollar, $10,000.00 bail on Mr. Glover as it did to hold him, because the prosecutor did not file her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) against Mr. Glover charging him with a crime, *see* (Exh-H at 57a-65a). The criminal circuit court could not set bail on Mr. Glover for a nonexistent offense, the law mandates that the criminal circuit court can only set bail for a charged offense therein a written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)). *See* Wis. § § § 969.02(1), 969.03(1) and 970.02(2).

On January 8, 1990, jury trial commenced, but ended in a plea. Mr. Glover pled not because he was guilty, but because he feared the criminal circuit court judge. *See* (Affidavit In Support, attached to this document as Exh-M at 89a-97a).

The criminal circuit court lacking subject-matter jurisdiction and personal jurisdiction from the outset [initial appearance] of the criminal case, without jurisdiction being conferred on it by law, which

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amounted to no more than consent and hypothetical jurisdiction, *see* (Exh-H at 57a-65a), on February 22, 1990, the criminal circuit court that lacked subject-matter jurisdiction to sentenced Mr. Glover to serve the maximum period of 45 years imprisonment and confinement in the Wisconsin Department of Corrections. *See* (Exh-J at 72a-74a).

The criminal circuit court, which sentenced Mr. Glover, was therefore without jurisdiction, and its judgment is void, *see* (Exh-J at 72a-74a). The judgment of conviction Mr. Glover is imprisoned and confined thereunder is "absolutely void for want of jurisdiction in the court that pronounced it," *see* (Exh-J at 72a-74a, Judgment of Conviction, Case No. 89CF402), "because such jurisdiction was absent at the beginning ... of the proceeding[]," *see* (Exh-H at 57a-65a, Initial Appearance Transcript, Case No. 89CF402). *See* ***Frank v. Mangum***, 237 U.S. 309, 327 (1915).

The on-point cases to Mr. Glover's case presented above in section 3C of this petition at pages 24-29 and respectfully incorporated herein by reference, creating extraordinary circumstances exists and in the interest of justice for the Court to rescind its' original order and recall the mandate thereof. In addition, the ***Sharp***, *supra*, ***Green***, *supra*, and ***Miller***, *supra*, cases cited are directly on-point to Mr. Glover's case. The fundamental and threshold principles of subject-matter jurisdictional law are clear for all courts. The corollary to the rule is consent, collusion, laches, waiver, or estoppel cannot confer that subject-matter jurisdiction otherwise lacking. Subject matter jurisdiction cannot be thus conferred irrespective of

whether the consent was the result of an honest mistake or otherwise:

> A plea of guilty or no contest "waives all nonjurisdictional defects and defenses," and that "'[j]urisdictional defects' can involve the court's personal jurisdiction over the person of the defendant or the court's jurisdiction over the subject matter of the proceeding." *See* ***State v. Dietzen***, 164 Wis.2d 205, 210, 474 N.W.2d 753, 755 (Wis.App. 1991); *see also* ***State v. Cvorovic***, 158 Wis.2d 630, 634, 462 N.W.2d 897, 898 (Wis.App. 1990). "Subject matter jurisdiction is conferred on the court by law; it cannot be conferred by consent, nor can it be waived." *See* ***Dietzen***, 164 Wis.2d at 210-211, 474 N.W.2d at 755.

When the prosecutor did not file her written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) against Mr. Glover at the outset [initial appearance] on the criminal circuit court from his warrantless arrest and detention in accordance with the prescribed time limitation period, Wis. § § 968.04(1)(a) and 970.01(2) in conjunction with Wis. § 970.02(1)(a), what occurred is,

> a) the prosecutor deprived the criminal circuit court of subject-matter jurisdiction pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03, the prosecutor

"failure to clear a jurisdiction hurdle can never be 'harmless' or waived by a court." *See Torres*, supra, 487 U.S. at 317 n.3;

and,

b) the prosecutor deprived the criminal circuit court of subject-matter jurisdiction pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. § 753.03, the State's (prosecutor's) error is one of jurisdictional magnitude, it cannot rely on any excuse for its lack of compliance with the statute's limitations. *See Bowles*, 551 U.S. at 213 (*citing Arbaugh*, 546 U.S. at 513-514, 126 S.Ct. 1235, 163 L.Ed.2d 1097).

Furthermore,

the criminal circuit court had no power to "delayed" or "stayed" the filing of the written mandatory and jurisdictional accusatory instrument ("complaint," Wis. § 968.01(2)) at the outset [initial appearance], where the defendant has been brought before from a warrantlessly arrested and detention in chains and shackles, to allow the State (prosecutor) time to file an out-of-time accusatory instrument [complaint] to invoke its subject-matter jurisdiction. Such a "delay" or "stay" by the criminal

> circuit court carries no weight, because a criminal circuit court has "no authority to create equitable exceptions to jurisdictional requirements."

See Bowles, 551 U.S. at 214.

RELIEF SOUGHT

Extraordinary circumstances exist and in the interest of justice for this Court to rescind its original order denying Mr. Glover habeas corpus relief and recall the mandate thereof. Mr. Glover was deprived of his liberty without due process and equal protection of the law, contrary to the Fourteenth Amendment and its' codifications. The criminal circuit court lacked subject-matter jurisdiction to condemn him and entered a judgment of conviction against him. Mr. Glover asks that this Court discharge him from the same immediately, instead of sanctioning him.

VERIFICATION

I, Ricardo Glover declare under penalty of perjury that the foregoing is true and correct. Executed on this 21st day of July, 2010.

Respectfully submitted,

"s/"

Ricardo Glover, Affiant-Layman
Prisoner ID No. 207606
Oshkosh Correctional Institution
Post Office Box 3310
Oshkosh, Wisconsin 54903-3310

INDEX TO EXHIBITS

Exhibit-A	Article VII, Section 8 of the Wisconsin Constitution – *Circuit court: jurisdiction.* Reformatted from page A1 to 48a
Exhibit-B	Wisconsin Chapter 753.03, Circuit Court, Wis. § 753.03 – *Jurisdiction of circuit courts.* Reformatted from page B1 to 48a
Exhibit-C	Wisconsin Chapter 968, Commencement Of Criminal Proceedings, Wis. § 968.01(2) – *Complaint* and Wis. § 968.04(1)(a) – *Warrant or summons on complaint* Reformatted from pages C1-C2 to 49a
Exhibit-D	Wisconsin Chapter 969, Bail And Other Conditions Of Release, Wis. § 969.02(1)– Release of defendants charged with Misdemeanors and Wis. § 969.03(1) – Release of defendants charged with felonies. Reformatted from page D1-D2 to 50a

Exhibit-E	Wisconsin Chapter 970 Criminal Procedure Preliminary Proceedings, Wis. § 970.01(2) – Initial appearance before a judge; Wis. § 970.02(1)(a) – Duty of a judge at the initial appearance; and Wis. § 970.02(2) – Duty of a judge at the initial appearance. Reformatted from page E1 to 51a
Exhibit-F	Emergency Room Report, St. Luke's Hospital, Racine, Wisconsin, Doctor G.L. Brown (Dated: May 29, 1989). Reformatted from pages A1 to 52a-53a
Exhibit-G	Kenosha, Wisconsin, Police Report, Officer Cindy Cros, (Dated: May 29, 1989). Reformatted from pages G1-G3 to 54a-56a
Exhibit-H	Initial Appearance Transcript, Racine, Wisconsin, State v. Glover, Case No. 89CF402 (Dated: May 30, 1989). Reformatted from pages H1-H7 to 57a-65a
Exhibit-I	Laboratory Findings, Wisconsin State Crime Laboratory, (Dated: July 31, 1989 and July 6, 1989). Reformatted from pages I1-I3 to 66a-71a

Exhibit-J	Judgment of Conviction, Racine, Wisconsin, State v. Glover, Case No. 89CF402 (Entered: February 22, 1990). Reformatted from page J1 to 72a-74a
Exhibit-K	*State of Wisconsin v. Christopher L. Russell*, 251 Wis.2d 482, 640 N.W.2d 565, 2002 Wisc. App. LEXIS 54 (Wis.App. 2002, unpublished opinion). Reformatted from pages K1-K4 to 75a-83a
Exhibit-L	*State of Ohio v. Billy Ray Bishop*, 1993 Ohio App. LEXIS 5799 (Ohio App. 1993, unpublished opinion). Reformatted from pages L1-L3 to 84a-88a
Exhibit-M	Affidavit In Support of Petition from Ricardo Glover (Dated: July 19, 2010). Reformatted from pages M1-M7 to 89a-a-97a
Exhibit-N	Order, United States Court of Appeals for the Seventh Circuit denying Habeas Corpus Appeal (Entered: November 25, 1997). Reformatted from page N1-N9 to 98a-111a

Article 7, Section 8 of the Wisconsin Constitution
(1989-1990)

Circuit court: jurisdiction. [*As amended April 1977*] "Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit as the legislature may prescribe by law. The circuit court may issue all writs necessary in aid of its jurisdiction."

WISCONSIN CHAPTER 753
CIRCUIT COURTS
(1989-1990)

753.03 Jurisdiction of circuit courts. The circuit court have general jurisdiction prescribed for them by article VII of the constitution and have power to issue all writs, process and commissions provided in article VII of the constitution or by the statutes, or which may be necessary to the due execution of the powers vested in them. The circuit courts have power to hear and determine, within their respective circuits, all civil and criminal actions and proceedings unless exclusive jurisdiction is given to some other court; and they have all the power, according to the usages of courts of law and equity, necessary to the full and complete administration of justice, and to carry into effect their judgments, orders and other determinations, subject to review by the court of appeals or the supreme court as provided by law. The courts and the judges thereof have power to award all such writs, process and commissions, throughout the state, returnable in the proper county.

WISCONSIN CHAPTER 968

COMMENCEMENT OF CRIMINAL PROCEEDINGS
(1989-1990)

968.01(2) Complaint. The complaint is a written statement of the essential facts constituting the offense charged. A person make a complaint on information and belief. Except as provided in sub. (3), the complaint shall be made upon oath before a district attorney or judge as provided in this chapter.

968.04(1)(a) Warrant or summons on complaint, When an accused has been arrested without a warrant and is in custody or appears voluntarily before a judge, no warrant shall be issued and the complaint shall be filed forthwith with a judge.

WISCONSIN CHAPTER 969

BAIL AND OTHER CONDITIONS OF RELEASE (1989-1990)

969.02(1) Release of defendants charged with misdemeanors. A judge may release a defendant charged with a misdemeanor without bail or may permit him to execute an unsecured appearance bond in an amount specified by the judge.

969.03(1) Release of defendants charged with felonies. A defendant charged with a felony may be release by the judge without bail or upon the execution of an unsecured appearance bond or the judge may in addition to require the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial.

WISCONSIN CHAPTER 970

CRIMINAL PROCEDURE – PRELIMINARY PROCEEDINGS (1989-1990)

970.01(2) Initial appearance before a judge. When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.

970.02(1)(a) Duty of a judge at the initial appearance. At the initial appearance the judge shall inform the defendant:

Of the charge against him and shall furnish the defendant with a copy of the complaint which shall contain the possible penalties for the offenses set forth therein. In the case of a felony, the judge shall also inform the defendant of the penalties for the felony with which the defendant is charged.

970.02(2) Duty of a judge at the initial appearance. The judge shall admit the defendant to bail in accordance which ch. 969."

EMERGENCY ROOM REPORT BELONGIA, SHELLY R.

557824

5/29/89

11 year old female, involved in an assault in which she was supposed to be taken over to her grandmother's house by her brother-in-law. When they could not find her grandmother there, they were returning to patient's sister's house so she could spend the night. When the brother-in-law took her to a bridge and, she states, attempted to sexually molest her, getting very close to her, placing his hands on her crotch and on her chest. When he could not get her jumpsuit off easily, apparently aborted his attempt to molest her and decided that he did not want her talking about it, so he took a torn towel and tied her hands together behind her back, told her that she wasn't going to be able to tell anybody about this and proceeded to stop on a bridge overlying a river with several feet of water in it, threw her off the bridge approximately 15-20 feet to the water below. Patient was able to untie her hands and escape. States that she scraped up her leg during the fall, landed primarily on her bottom. Absolutely denies any pain at this time. Seems to be in relatively good spirits. Is able to describe the incident consistently between those interviewers and in relatively good detail. Otherwise, no evidence by history of other problem.

Physical examination show several scratches to the left anterior tibial region. Patient shows good ROM Of all extremities. HEENT exam is unremarkable. Neck is supple. Lungs, cardiac exam, abdomen are all benign. Patient absolutely denies that any actual sexual contact took place.

Assessment: Attempted sexual assault, as well as physical assault with intent to do bodily harm. Patient is relatively injury-free at this time and exceedingly fortunate.

Will have patient discharged only to custody of her mother or suitable guardian, with full instructions that if any problems develop she is to return here right away.

"s/"

G.L. Brown, M.D. /prr

d52989t53189

Kenosha Wisconsin Police Department

CLASS 1710	DATE & TIME	PAGE
CODE 1700	5-29-89	1 of 3

JURISDICTION GRID: 8C
CASE OR EVENTS NO.: 89-47252

COMPLAINANT/REPORTING PERSON – NAME

LAST	FIRST	MI	SEX	RACE	DOB
Belongia	Shelly	R.	F	W	9-10-77

RESIDENCE ADDRESS	CITY	STATE	ZIP
5703 13TH Avenue	Kenosha	Wisc.	

CRIME OF INCIDENT	DATE – TIME OCCURRED
Sexual Assault	5-29-89 0330

DESCRIBED LOCATION OF OFFENSE/OR PREMISE
Residence 5703 13th Avenue

SUMMARY OF CRIME OR INCIDENT
Compl reports that she was sexually assaulted by her brother-in-law.

NO CONSENT FORM

I, Shelly Belongia, HAVE GIVEN NO ONE CONSENT SEXUALLY ASSAULT ME IN ANY MANNER

"s/
Sandra Belongia-Mother

WITNESS "s/" SIGNED "s/"

Cindy Cros	Shelly Belongia
REPORTING OFFICER NO.	SUPERVISOR
"s/" #242	"s/"
Cindy Cros Reporting	Lt. M. Bostettia

SUPPLEMENTARY INVESTIGATION REPORT

CASE OR EVENTS NO.	NO. OF PAGES
89-47252	2 OF 3

DATE OF SUPPLEMENTARY REPORT

5-29-89

DATE – TIME REPORT

5-29-891507

S = Glover, Ricardo DOB 1-24-62 WM

4035 Erie St., Racine, Wisc.

Officer spoke with compl Shelly Belongia ref compl of sexual assault. Suspect in compl is victim's brother-in-law Ricardo Glover.

Belongia stated that she was spending the night in Racine at her sister's house. Her sister is married to suspect Glover.

Belongia was awaken at approx 1 am by Glover on this date, and was driven back to Kenosha to her residence by Glover. Nobody was home at Belongia's residence except her grandmother. Belongia was held with a knife against her throat by Glover and was ordered to take her clothes off or she would be killed. She complied and she layed on top of her mother's bed with Glover on top of her naked. Belongia states that intercourse did not occur but Glover ejaculated on the bed sheets. Afterwards he order her dressed and back in the car where they drove back to Racine. They parked on Parkview Dr. and Glover tied Belongia's hands behind her back with a towel. They

REPORTING OFFICER		SUPERVISOR
"s/"	#242	"s/"
Cindy Cros		Lt. M. Bostettia

SUPPLEMENTARY INVESTIGATION REPORT

CASE OR EVENTS NO. NO. OF PAGES

89-47252 3 OF 3

DATE OF SUPPLEMENTARY REPORT

5-29-89

DATE – TIME REPORT

5-29-89 1507

got out and walked to a bridge that is over the Root River. Glover then threw Belongia over the bridge and into the river. Belongia was able to get up because the water was shallow and she got help from a nearby residence. Racine PD responded and took Belongia to St. Luke's Hospital for examination. During the sexual assault, Glover did not kiss or touch Belongia except for his penis touching her leg. Officer obtained a statement from Belongia. Case was turned over to Det. Kopesky. Det. Kopesky took sheets as evidence.

REPORTING OFFICER

"s/" #242

Cindy Cros

SUPERVISOR

"s/"

Lt. M. Bostettia

STATE OF WISC. : CIRCIUT COURT : COUNTY RACINE
BRANCH 6

****

STATE OF WISCONSIN,

Plaintiff,

-vs-

RICARDO GLOVER,

Defendant.

*INITIAL APPEARANCE

Case No. 89CF402

****

HONORABLE WAYNE J. MARIK
Judge Presiding

APPEARANCE:

Zoe Stowers, Assistant District Attorney, appearing on behalf of the plaintiff.

Daryl Kastenson, Assistant State Public Defender, appearing on behalf of the defendant who was present in court.

Date of Proceeding:
May 30, 1989

Gayle Leikam
Court Reporter

THE COURT: State versus Ricardo Glover

MS. STOWERS: Zoe Stowers appears for the state.

MR. KASTENSON: Daryl Kastenson on behalf of the defendant who appears in person.

MS. STOWERS: Your Honor, these charges came in today. We've sent it back for further investigation and intend to issue charges tomorrow. There are also potential charges coming out of Kenosha with reference to this incident, and we're going to have to coordinate it with Kenosha.

The allegations are that the defendant allegedly raped his eleven-year-old sister-in-law at knife point—that incident occurred in Kenosha—took her to the riverfront in Racine, tied her hands behind her back, and threw her off the bridge which is

approximately eighteen feet from the water into three feet of water, and then fled the scene.

So there are potential attempted murder charges coming out of Racine. I guess we should have a bond review at this time.

THE COURT: All right. As far as the nature or strength of character of the evidence, do you have statements from any persons other than the young lady who's the alleged victim?

MS. STOWERS: We have the statement of the young lady. This is Beth Blackwood's case, and she informed me of what the reports indicated. She arrived at a house, and witnesses observed her hands to be tied behind her back; at that point she was wet.

Other then that, the young girl's statement as to what occurred the defendant does have a criminal record from Muskegon, Michigan, for what's termed as illegal entry. He also gave police a false

identification and insisted in this false identification at the time of his arrest.

The state would ask for a minimum of $50,000 cash.

THE COURT: False identification; a false name that was given?

MS. STOWERS: The note I have was false identification.

THE COURT: All right. Mr. Kastenson?

MR. KASTENSON: Judge, my client has lived in Racine for six years. His aunt is present in court today who, I believe, is also employed. My client is employed at Ganto Technology (spelled phonetically) in Sturtevent and if released, would not be eligible for our representation. He has other assets that are fairly minimal.

Again, he has lived in Racine six years. He has no record here. He does admit to having a record; he told me he had an illegal entry charge in Michigan in about 1983 about six years ago and lives at 1206 Grand Avenue in Racine.

I'd ask that the Court permit him to sign a signature bond until tomorrow at 2 o'clock with home detention if the Court wants that. He would like to be able to keep his employment obviously. And I think the aunt might be willing to sign the bond, although she has no real property; I think the automobile is the most available.

THE COURT: Other than his aunt, does he have any other relatives of family members in the Racine community?

MRS. GLOVER: Excuse me, your Honor, I'm his wife.

MR. KASTENSON: That's correct. He apparently is separated at this point.

THE DEFENDANT: No. I came from Michigan, yes. And I don't have any type of record. When I had that illegal entry, it was served on me here and I did appear before the Court here. If you want to—I want to get to my job tomorrow before I lose it.

MR. KASTENSON: You referred to somebody coming up to a house?

MS. STOWERS: This was after the incident; an independent witness observed her hands to be tied behind her back.

THE DFENDANT: May I—

THE COURT: Don't say anything about the incident; I suggest you follow your lawyer's advice in that regard, Mr. Glover.

All right. The nature of the potential charge here certainly is extremely aggravated and extremely serious. It does appear that at least the minimum amount of evidence that we have to go on at this point is corroborated by this interested third party, that we're not going solely on the basis of the information provided by the young lady.

I note that Mr. Glover does have some ties to the community which might be termed relatively strong, that he has employment, and has been here for a period of time. But I believe his incentive to flee from the jurisdiction considering the fact that he has some sort of a prior record and is facing rather serious charges here with extremely aggravated potentials would be incentive for him to flee.

I think that something more that a signature bond or a simple co-signed bond is necessary to guarantee that he will, in fact, appear when

complaints are filed tomorrow and in further proceedings. If there was someone available, some property to post, the Court would consider it; but that doesn't appear to be a possibility.

Therefore, I am going to set bond in the form of cash bail in the amount of $10,000. I think that that amount, based upon the information that's been provided, is reasonably necessary to guarantee the defendant's appearance. I think that the amount requested by the state is substantial weighted by the evidence before the Court at this time; I think that the other amount is reasonably necessary and adequate to guarantee the defendant's appearance.

The matter will be set for hearing tomorrow afternoon at 2:00 p.m.

(Proceedings concluded.)

* * * *

STATE OF WISCONSIN)
) SS.
COUNTY OF RACINE)

I, Gayle Leikam, Freelance Court Reporter, do hereby certify that I reported the foregoing matter and that the foregoing transcript, consisting of 5 pages, has been carefully compared by me with my stenographic notes as taken by me in machine shorthand and by me thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge.

Dated this 18th day of May, 1990.

"s/"
Gayle Leikam, CSR

CONFIDENTIAL REPORT OF LABORATORY FINDINGS

WISCONSIN DEPARTMENT OF JUSTICE

Division of law Enforcement Services

STATE CRIME LABORATORY

1578 South 11th Street

Milwaukee, WI 553204-2860

(414) 649-2440

Submitting Agency: Date: July 31, 1989

[ ] Case No. R89-1453

Chief Karl A. Hansen Agency No. 89-35979

Racine Police Department

730 Center Street

Racine, WI 53403

[ ]

Attn: Jackie Cooper

Laboratory Analyst:

Case Name: "s/"

Belongia, Shelly R. (V) Elaine Canales-Willson

Racine, Racine (Serology)

County, Wisconsin

I do hereby certify this document, consisting of 2 page(s), to be a true and correct report of the findings of the State Crime Laboratory on the items examined as shown by this report.

669

Donald J. Hanaway . Designee"s/" .
ATTORNEY GENERAL SIGNATURE

The following items were submitted for examination by the Serology section:

Item A1:	Vaginal swabs
Item A2:	Cervical swabs
Item A3:	Rectal swabs
Item A4:	Vaginal smears
Item A5:	Cervical smear
Item A6:	Unlabelled smears
Item A7:	Standard saliva sample
Item A8:	Standard head hair
Item A9:	Standard pubic hair
Item A10:	Pubic hair combings
Item B:	Standard blood sample
Item C:	Piece of towel
Item D:	Panties
Item E:	Skirted leggings
Item F:	Hospital pad
Item H:	Black sweatpants
Item J:	Piece of towel
Item K:	Black/white underwear
Item L:	Pink bedsheet

Items A1 through F were reportedly collected from Shelly Belongia.

Items J and L were reportedly recovered from Shelly Belongia's residence.

Items H and K reportedly belong to Ricardo Glover.

1. No semen was detected on the vaginal swabs (Item A1), No sperm were observed during microscopic examination of the vaginal, cervical or unlabeled smears (Items A4, A5 and A6). One sperm was detected in a smear prepared from the cervical swabs (Items A2).

2. Seminal components was detected on the rectal swab. No information regarding the semen source was obtained from typing examination of this swab.

3. No semen was detected on the panties, leggings or bedsheets (Item D, E and L). Two head hairs recovered from Item E were similar in microscopic characteristics to the standard head hairs of Belongia (Item A8). A small bloodstain was detected on the sheet (Item I) but the attempted typing examination was unsuccessful.

4. Item C, a strip of a towel reportedly used as a ligature, and Item J, a part of a towel torn lengthwise, have matching blue and green floral patterns on a white background. The one blonde head hair recovered from Item C was inconsistent with the standard head hairs of Item A8.

5. The one head hair recovered from the hospital examination pad was not consistent in microscopic characteristics with the standard head hairs of Item A8.

6. Seminal stains were detected on the inside from of Glover's sweatpants (Item H) but not the underwear (Item K).

No typing examinations were performed on these stains.

Page 2 "s/"

State Crime Laboratory-Milwaukee case No, R891453

TWO COPIES OF THIS REPORT ARE BEING FURNISHED FOR YOUR TRANSMITTAL TO THE DISTRICT ATTORNEY.

CONFIDENTIAL REPORT OF LABORATORY FINDINGS

WISCONSIN DEPARTMENT OF JUSTICE

Division of law Enforcement Services

STATE CRIME LABORATORY

1578 South 11th Street

Milwaukee, WI 553204-2860

(414) 649-2440

Submitting Agency: Date: July 6, 1989

[ ] Case No. R89-1453

Chief Karl A. Hansen Agency No. 89-35979

Racine Police Department

730 Center Street

Racine, WI 53403

[ ]

Attn: Jackie Cooper

Laboratory Analyst:

Case Name: "s/"

Belongia, Shelly R. (V) John P. Nielson

Racine, Racine County (Identification)

Wisconsin

I do hereby certify this document, consisting of 1 page(s), to be a true and correct report of the findings of the State Crime Laboratory on the items examined as shown by this report.

Donald J. Hanaway .Designee"s/" .

ATTORNEY GENERAL SIGNATURE

The following items were received:

Item G: One knife

Item I: Two 1 3/4 oz "Vaseline" jars

Examination of Items G and I revealed no finger or palm prints which were suitable for comparison.

DEPARTMENT OF HEALTH & SOCIAL SERVICES
Division of Corrections
DOC-14 (Rev. 10/84)

STATE OF WISCONSIN
Wisconsin Statutes
Section 972.13

JUDGMENT OF CONVICTION
SENTENCE TO WISCONSIN STATE PRISONS

STATE OF WISCONSIN, Plaintiff,

v.

STATE OF WISCONSIN, Circuit Court Branch 5

Ricardo Glover, Defendant, County Racine. Jan. 24, 1962 Defendant DOB Court Case No. 89CF402.

The defendant entered his plea no contest:
☐ guilty ☐ not guilty ☒ no contest:
The ☒ Court ☐ Jury found the defendant guilty of:

Crime(s)	Wis. Statute(s) Violation.	Felony or Misdemeanor (F or M).	Class Crime (A-E)	Dates(s) Committed
Ct 1: 1st Sexual Assault	940.225(10(d)	F		5-29-89
Ct 2: False Imp, w/dang. weapon	940.30 & 939.63(1)(a)(4)	F		5-29-89

729